

1
2
3
4
5
6
7
8
9
10
11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA
13

14 UNITED STATES OF AMERICA,) 3:99-cr-00064-HDM-VPC-2
15 Plaintiff,) 3:16-cv-00054-HDM
16) ORDER
17 vs.)
18 DALE W. WARD,)
19 Defendant.)
_____)

20 Before the court is defendant Dale W. Ward's petition for relief
21 under 28 U.S.C. § 2255 filed on February 4, 2016(#386).

22 On November 8, 2000, a third superseding indictment was issued
23 charging defendant with conspiracy to possess with intent to
24 manufacture, to manufacture and possess with intent to distribute
25 methamphetamine, manufacture of methamphetamine, possession with
26 intent to distribute methamphetamine, possession of a listed chemical
27 with intent to manufacture methamphetamine, establishment of
28 methamphetamine manufacturing operations, and aiding and

1 abetting(#137). After a plea of not guilty, the defendant was found
2 guilty on all counts of the third superseding indictment (#238). On
3 February 12, 2002, a judgment of conviction was entered and defendant
4 was sentenced to life imprisonment without release (#238).

5 On March 27, 2003, the defendant filed a petition for relief
6 under 28 U.S.C. § 2255 (#269). Following a response from the
7 government and a reply from defendant, the court denied defendant's
8 motion on March 14, 2005 (##321, 322). Defendant requested a
9 certificate of appealability on the court's order, which was denied
10 (##331, 332, 338). Defendant appealed, and on January 26, 2006, the
11 Ninth Circuit denied defendant a certificate of appealability (#362).

12 Pursuant to 28 U.S.C. § 2255, a federal inmate may move to vacate,
13 set aside, or correct his sentence if: (1) the sentence was imposed
14 in violation of the Constitution or laws of the United States; (2) the
15 court was without jurisdiction to impose the sentence; (3) the
16 sentence was in excess of the maximum authorized by law; or (4) the
17 sentence is otherwise subject to collateral attack. 28 U.S.C.
18 § 2255(a). Where the defendant has previously filed a § 2255
19 petition, a second or successive § 2255 petition cannot be considered
20 by the district court absent a certificate from the Court of Appeals
21 authorizing it to do so. 28 U.S.C. § 2255(h); 28 U.S.C. § 2244;
22 *United States v. Washington*, 653 F.3d 1057, 1065 (9th Cir. 2011).

23 As the defendant has previously filed a § 2255, the instant
24 motion is a second or successive petition. Accordingly, as the Ninth
25 Circuit has not authorized the filing of a second or successive § 2255
26 petition in this case, the court is without jurisdiction to consider
27 it and the motion (#386) is therefore **DENIED**. The defendant's motion
28 to proceed *in forma pauperis* (#387), motion for appointment of counsel

(#388), and request for leave to file an exhibit (#389) are **DENIED AS MOOT.**

IT IS SO ORDERED.

DATED: This 17th day of February, 2016.



UNITED STATES DISTRICT JUDGE